

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Public Health	(2) MEETING DATE 1/12/2016	(3) CONTACT/PHONE Penny Borenstein / 781-5519	
(4) SUBJECT Update on the Proposed Draft Land Application of Biosolids Ordinance and Environmental Impact Report/Notice of Preparation Process. All Districts.			
(5) RECOMMENDED ACTION It is recommended that the Board receive and file this update on the proposed draft Land Application of Biosolids Ordinance and the Environmental Impact Report/Notice of Preparation process, and provide any further direction to staff as the Board deems appropriate.			
(6) FUNDING SOURCE(S) N/A	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? N/A
(10) AGENDA PLACEMENT { } Consent    { } Presentation    { } Hearing (Time Est. ____ ) { <b>X</b> } Board Business (Time Est. <u>30 min</u> )			
(11) EXECUTED DOCUMENTS { } Resolutions    { } Contracts    { } Ordinances { <b>X</b> } N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: N/A { } 4/5 Vote Required    { <b>X</b> } N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY { } N/A    Date: <u>March 12, 2013 / May 6, 2014</u>	
(17) ADMINISTRATIVE OFFICE REVIEW			
(18) SUPERVISOR DISTRICT(S) All Districts			

# County of San Luis Obispo



TO: Board of Supervisors

FROM: Jeff Hamm, Health Agency Director  
Penny Borenstein, MD, Health Officer

DATE: 1/12/2016

SUBJECT: Update on the Proposed Draft Land Application of Biosolids Ordinance and Environmental Impact Report/Notice of Preparation Process. All Districts.

## **RECOMMENDATION**

It is recommended that the Board receive and file this update on the proposed draft Land Application of Biosolids Ordinance and the Environmental Impact Report/Notice of Preparation process, and provide any further direction to staff as the Board deems appropriate.

## **DISCUSSION**

### **Treated Sewage Sludge/Biosolids Explained**

The terms *biosolids* and *sewage sludge* are often used interchangeably. When properly treated and processed, sewage sludge becomes biosolids; the nutrient-rich organic materials resulting from the treatment of domestic sewage in a municipal wastewater treatment facility. Biosolids can be beneficial in agriculture when recycled and applied as fertilizer to improve and maintain productive soils and stimulate plant growth. Biosolids can also create risks to public health if not properly managed due to pollutants such as disease-causing organisms (pathogens), metals, or chemicals like medicines or synthetic products. At uncontrolled levels, pollutants can accumulate in soil or crops; however, pollutant levels can be controlled such that land application of biosolids may yield benefit (see Attachment 1 – *“Hard Facts about the Risks and Benefits of Using Treated Sewage Sludge/Biosolids on Land”*.)

There are three categories of biosolids: Class B biosolids (reduced number of pathogens), Class A biosolids (no detectable pathogens), and Exceptional Quality (EQ) biosolids (no pathogens and comply with metal limits) which receive the highest level of treatment. Biosolids may be applied directly to land if Federal, State, and local rules are followed.

### **Background**

Beginning in 1998, the land application of biosolids/treated sewage sludge (hereinafter referred to as “biosolids”) has been a subject of interest and discussed broadly in the public policy arena, including by two separate task forces formed to guide public policy in San Luis Obispo County. Both efforts included technical experts, interested stakeholders, and public and local agency participation in working groups. The issue first came to the fore in 1998 from local residents concern expressed over a proposal to apply biosolids to a ranch to grow alfalfa near San Miguel.

The County Health Commission convened a first task force in 1998 to explore properties of biosolids; Federal, State and local regulation; amounts and disposal options used across the U.S., California and in San Luis Obispo County; and oversight practices. Findings from the Health Commission Task Force report (dated 9/29/1999) were presented to the Board of Supervisors on February 8, 2000 and broadly included the following three recommendations:

1. Develop a county-based program to ensure local control of biosolids management.
2. Convene a working group to develop a policy for biosolids land applications in San Luis Obispo County.

3. Initiate a public education campaign.

At that same Board meeting, the Public Health Department presented seven options for regulating the land application of biosolids. The options ranged from maintaining the status quo to a complete ban. The Board directed the Public Health Department to convene a public working group to consider four of the seven options and to recommend a preferred framework for a County ordinance for managing the land application of biosolids. The four options were:

1. Create a local ordinance based on Federal and State regulations providing local control and oversight of how, when, and where biosolids may be applied.
2. Create a local ordinance establishing more stringent requirements for quality of acceptable biosolids material, as well as local control and oversight of how, when and where biosolids may be applied.
3. Create a local ordinance limiting biosolids land application to "exceptional quality" (EQ), the highest quality grade of biosolids as defined by existing Federal regulations.
4. Create an interim ban on biosolids land application while the workgroup conducts an evaluation to determine whether the ban should be lifted or remain in place.

The Board specifically excluded from consideration by the public working group the two options that would retain the status quo and the option that would create a total ban on the land application of biosolids.

Thus began the second Task Force. The group met over a 13-month period beginning October 2000, with representation from agricultural, Cal Poly faculty, County technical staff, environmentalists, biosolids industry experts, wastewater treatment operators and the general public. Meetings brought in technical experts on the issue of biosolids from the University of California at Riverside, US Environmental Protection Agency (EPA), the State Water Resources Control Board, California Farm Bureau, and Cornell University. The Task Force completed its recommendations on October 26, 2001 which generally state:

1. Create a local ordinance establishing more stringent requirements than currently exist in Federal and State law for the quality of acceptable biosolids material.
2. Provide for local control and oversight of the land application of biosolids.
3. Local standards shall be derived from but not limited to State and Federal regulations.
4. Use pollution accumulation limits considering local soil pollutant levels.
5. Develop a comprehensive set of constituents including heavy metals (zinc, cadmium, copper, nickel, chromium, lead), synthetic chemicals, pathogens and other pollutants for setting biosolids quality and land accumulation limits.
6. Limit the acceptance or processing of new land application projects beyond historical amounts of exceptional quality (EQ) treated sewage sludge until a local ordinance is completed.
7. Consider all feasible methods of treated sewage sludge/biosolids management and their relative impacts. (It is not the intent of the land application ordinance to establish standards for other methods of biosolids management, but rather to allow for use of other methods such as composting, incineration and land filling and as necessary consider their relative impacts.)
8. Develop procedures to ensure public and community notification of project proposals.
9. Ensure that the fees imposed on projects are sufficient to fund assessment, monitoring and oversight activities.
10. Consider limitations on applying biosolids to various crops, playgrounds, parks, and other specific circumstances.
11. Determine the project requirements identifying conditions for the application of biosolids such as weather, water supply protection, erosion control, frequency of application and other requirements.

These eleven recommendations were presented and accepted by the Health and Planning Commissions in December 2001 and January 2002, respectively, and were brought to the Board of Supervisors on March 12, 2002. At the March 2002 meeting, the Board directed the Public Health Department to draft two ordinances – one to establish an interim moratorium on the land application of biosolids other than exceptional quality (EQ) biosolids. Further, the Board directed

that the interim ordinance limit new land application projects to historical amounts of EQ biosolids until a permanent ordinance is completed. Board direction for a second ordinance was to develop a final biosolids ordinance.

The Task Force was reconvened to draft the interim ordinance which would satisfy the first Board directive - to limit new land application projects to historical amounts of EQ biosolids until a permanent ordinance is completed. An interim ordinance was completed in March 2003 and a CEQA review was completed on August 29, 2003 where it was determined that the ordinance could not have a significant effect on the environment, and a Negative Declaration was prepared. The interim ordinance was first heard by the Board on December 2, 2003 when staff was directed to make a revision to increase the cap, from 1000 to 1500 cubic yards, on the cumulative total of EQ biosolids that can be applied in any 12-month period. The current interim ordinance was re-introduced to the Board for hearing on February 24, 2004, and subsequently enacted on March 2, 2004. The initial Interim Ordinance had an expiration of either passage of a Permanent Ordinance or 24 months from enactment of the Interim Ordinance, whichever occurred first.

Thereafter, a decision was made that manpower and fiscal resources limited the ability to move further on a permanent ordinance. With a March 2, 2006 ordinance expiration date ahead, Environmental Health Services staff brought an update to the Board on January 6, 2006 to both report on the performance of the interim ordinance and to receive further direction. The Board opted to extend the interim ordinance for an additional four year period. Such has occurred on two additional occasions, in 2010, as the County was in the middle of its "seven-year pain plan," and again, most recently, in 2014, such that the current interim ordinance extension will sunset in March 2018.

At the Board's direction in both March 2013 and May 2014, a work plan and funding requirements were developed to reestablish pursuit of a permanent ordinance, a permanent ordinance was drafted (Attachment 2), and the California Environmental Quality Act (CEQA) process initiated.

### **Permanent Ordinance and EIR/NOP Process**

In 2015, the Public Health Department, Environmental Health Services Division drafted a permanent ordinance based on task force recommendations and Board direction and initiated the California Environmental Quality Act (CEQA) review, including the need for an Environmental Impact Report (EIR).

A budget was approved for \$200,000 to complete the CEQA review and the process was initiated November 2015. Since moving forward with the EIR Notice of Preparation (NOP) process, the Planning and Building Department received comments from some stakeholders that the scope of the proposed draft ordinance was inadequate because the draft failed to conform with Board directives/task force recommendations given to County staff.

Respecting that there are diverse perspectives on the regulation of biosolids, County staff disagree that the Board directives/Task Force recommendations were not followed. A concerted effort was made to include each recommendation as it was thought to be appropriate or feasible in a permanent ordinance. Further, it is County staff's perspective that Boards subsequent to the 2002 Board would expect staff to use their best judgment where a specific recommendation warranted modification or could be addressed more effectively in the ordinance in a different way. A complete listing of the 2002 task force recommendations is attached, with explanation of how each one is addressed in the permanent ordinance or to what extent and why some have been modified or addressed differently (Attachment 3).

As mentioned previously, the adoption of an ordinance is a project that requires review under CEQA. CEQA requires evaluation of the potential environmental impacts that could occur from approval of development projects, policies, programs and ordinances. The proposed Land Application of Biosolids ordinance requires CEQA review.

In this case, the County has determined that an EIR will be prepared for the proposed ordinance. The EIR process starts with the NOP. This NOP includes a project description along with a description of the potential environmental impacts of the project (ordinance). The NOP was available to agencies, stakeholders and the public for review and comment for 45 days with the comment period having closed on December 18, 2015. An EIR scoping meeting was held on November 12, 2015.

An important part of the EIR process is the identification and evaluation of alternatives to the proposed project. CEQA requires the lead agency (the public agency in charge of the project or project approval and in this case the County of San Luis Obispo) to select and evaluate a reasonable range of feasible alternatives. The discussion of alternatives must focus on alternatives which are capable of avoiding or substantially lessening any significant impacts of the proposed project

(ordinance).

For the Biosolids Ordinance EIR, several alternatives have already been included in the scope of work based on past direction, public comments and staff recommendations. These alternatives include: 1) making the interim ordinance permanent; 2) allowing the land application of Class A or B biosolids to ensure a full range of alternatives analysis; 3) incorporating additional restrictions for use on food crops; 4) other alternative sewage treatment and disposal options, such as composting, that could be regulated locally and included within the ordinance. In addition, during the preparation of the EIR and the review of comments, other alternatives may be developed and added. Analysis of these alternatives will ensure a full discussion of a reasonable range of alternatives in compliance with CEQA.

It is important to note that staff is currently reviewing the comments received on the Notice of Preparation and the proposed ordinance. Based on these comments, if warranted, revisions may be made to the proposed ordinance and /or EIR scope. Any changes will be made available to the public through the Draft EIR review process.

#### **OTHER AGENCY INVOLVEMENT/IMPACT**

The County Planning and Building Department is the lead for the proposed draft ordinance EIR/NOP process.

Over the years, numerous state and local agencies, as well as private citizens, non-profit agencies and other interested parties have been involved in the development of policy guidance associated with the land application of biosolids. They include the San Luis Obispo County Farm Bureau, City of San Luis Obispo Wastewater Treatment Plant, South San Luis Obispo County Sanitation District, Synagro, University of California Cooperative Extension, Air Pollution Control District, Agricultural Commissioner's Office, Cal Poly, ECOSLO, Environmental Division of County Planning Department, California Association of Sanitation Agencies, State Water Resources Control Board, Agricultural Liaison Advisory Board, Water Resources Advisory Board, Regional Water Quality Control Board, USEPA, Center for Sludge Information, San Luis Obispo County Health Commission, Integrated Waste Management Board, Sierra Club, California Farm Bureau, Cornell University, and other interested parties.

#### **FINANCIAL CONSIDERATIONS**

The financial considerations related to the development and enactment of a permanent ordinance includes staffing costs and the cost of preparing an Environmental Impact Report in order to satisfy CEQA requirements. The Environmental Impact Report is estimated to cost \$200,000 and is expected to be completed in FY 2016/17. The EIR funding is included in the current Public Health Department fiscal year budget.

#### **RESULTS**

The continuation of the current EIR/NOP process will keep the proposed draft land application of biosolids ordinance moving forward as directed by the Board. County staff has worked carefully to develop the draft ordinance with consideration of Board directives/task force recommendations included in the proposed draft ordinance. This is consistent with the countywide goal of promoting healthy communities.

#### **ATTACHMENTS**

1. Fact Sheet on Benefits and Risks of Land Application of Biosolids Sludge/Biosolids on Land
2. Proposed Draft Land Application of Biosolids Ordinance
3. Task Force Recommendations for permanent ordinance with staff comments